IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3227 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOHARSING ALIAS MOHANSING S/O. DILIPSING SIKLIGAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3227 of 2005

MS JAYSHREE C BHATT for Petitioner No. 1

MS HB PUNANI, AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Vadodara

City, on 23rd December, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 23rd December, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration four cases registered against the petitioner for the offences punishable under Sections 454, 457, 380 and 114 of the Indian Penal Code. Secondly, the detaining authority took into consideration two incamera statements of the witnesses as recorded by the sponsoring authority on 7th December and 8th December of 2004 and verified by the detaining authority on 22nd December, 2004. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of four crimes, the first crime was registered against the petitioner before City Police Station, Vadodara on 30th August, 2004, wherein it was alleged that the petitioner was involved in theft of cash amount and the amount of Rs.15,000-00 was recovered from the petitioner. The second crime was registered against the petitioner before D.C.B. Police Station, Vadodara on 22nd September, 2004 and as per the allegation, the petitioner was involved in theft of gold articles and cash amount. The third crime was registered against the petitioner before D.C.B. Police Station, Vadodara on 23rd September, 2004 and there also, as per the allegation, the petitioner was involved in theft of golden ornaments etc. The fourth crime was also registered against the petitioner before the D.C.B. Police Station, Vadodara on 3rd December, 2004, wherein the petitioner was involved in theft of some ornaments. The detaining authority considered exhaustively and thoroughly investigation papers in the above said four crimes registered against the petitioner and came to the conclusion that the petitioner was a habitual offender.

4. Out of two incamera statements, the first witness referred to an incident occurred on 28th December, 2004. At about 10.00 A.M., the petitioner was standing near Dabhoi Road and was approached by the petitioner and his two accomplices. The petitioner took out one gold earrning from his pocket and stated that he was in need of money and that the witness should keep the said

earrning and deliver Rs.500-00 to the petitioner. The witness knew the activities of the petitioner and, therefore, he refused. Thereupon, the petitioner was got excited and started beating the witness. The witness raised shouts for help, which attracted crowd, but at the instigation of the petitioner, his accomplices rushed towards the crowd with weapons like knife, gupti etc., so people started running helter-skelter and public order was disturbed. The second witness referred to an incident occurred on 2nd December, 2004. At about 7.30 P.M., the witness was passing through Dabhoi Road and was accosted by the petitioner and his accomplices. The witness was beaten by the petitioner and his accomplices on suspicion that the witness was providing information to the police about the illegal activities of the petitioner. The witness raised shouts for help, which attracted a crowd, but at the instigation of the petitioner, his accomplices rushed towards the crowd with weapons, so the crowd was dispersed and public order was disturbed.

5. After relying upon the above materials, the detaining authority came to the conclusion that the petitioner was engaged in anti social and illegal activities of committing theft and harassing innocent citizens. In view of the detaining authority, the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority came to the conclusion that the petitioner was headstrong, ferocious and of violent temperament and was in habit of administering threats to the innocent citizens and to beat them. The detaining authority came to the conclusion that these illegal activities of the petitioner were prejudicial to the maintenance of the public order and were required to be prevented forthwith. After considering the remedies available against the petitioner under the general law, the detaining authority concluded that there was no other alternative, except to detain the petitioner under the PASA Act. The detaining authority, therefore, passed the order of detention against the petitioner, which is under challenge in this petition.

6. Learned advocate Ms.J.C.Bhatt for the petitioner and learned AGP Ms.H.B.Punani for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and as placed on record by the learned AGP, is taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and

disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Referring to the four criminal cases filed against the petitioner under the Indian Penal Code for committing theft and going through the investigation papers as placed on record, it is found that those four cases came to be filed against the detenu because he was found during investigation to have committed offences of theft. The act which is alleged in the criminal cases is offence under the Penal Statute of the country. However, merely filing cases under the Penal statute of the country, would not result in a conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

9. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner

and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

10. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances

could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

11. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Police Commissioner, Vadodara City, on 23rd December, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Joharsing alias Mohansing s/o. Dilipsing Sikligar is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

(J.R. Vora, J.)

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